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C O N F I D E N T I A L ANKARA 006570

SIPDIS

DEPARTMENT FOR EUR/SE

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SUBJECT: COURT CONTINUES TO DENY RELEASE OF LEYLA ZANA,
CO-DEFENDANTS

REF: ANKARA 5217 AND PREVIOUS

(U) Classified by Polcouns John Kunstadter; reasons 1.5 b and d.

1. (SBU) Summary: An Ankara court continues to refuse to release Leyla Zana and three other Kurdish former MPs pending the outcome of their retrial. The defense has sought the release in each of the trial's eight hearings. Defense attorneys and a member of Parliament argued at the last session that the court's refusal violates the rulings of the European Court of Human Rights (ECHR). An EU contact told us the EU will criticize the conduct of the trial in its upcoming Progress Report on Turkey. End Summary.

2. (U) An Ankara State Security Court (SSC) October 17 refused, for the eighth consecutive time, a defense request for the release of four former MPs from the pro-Kurdish independence Democracy Party pending the outcome of their retrial on charges of membership in an illegal organization (the PKK). The defendants -- Leyla Zana, Hatip Dicle, Orhan Dogan, and Selim Sadak -- were convicted in a controversial trial in 1994. They later won their appeal to the ECHR, and were granted a retrial under recent EU-related GOT reforms. At each session of the retrial, which began March 28, the court has refused to release the defendants. Poloff attended the October 17 session, as did representatives from the EU Turkey office, European embassies, international and domestic NGOs, and the Turkish Parliament.

3. (U) Lead defense attorney Yusuf Alatas told the three SSC judges that his clients were entitled to a presumption of innocence in light of the ECHR appeal ruling in their favor, and argued that the court's refusal to release them constituted a violation of the ECHR ruling. Cavit Torun, a member of the parliamentary Human Rights Committee, told reporters during a break in the session that he agrees that the court's refusal to release the defendants violates the European Convention for the Protection of Human Rights. Defense attorney Hasip Kaplan averred in court that Turkey's SSC system is inconsistent with EU membership and contrary to the current trend of GOT human rights reform. He called on the SSC to ask the Constitutional Court to abolish the SSC system. The court did not respond.

4. (U) During the hearing, the court read the testimony of jailed PKK militant Ejder Pacal, who claimed that Leyla Zana traveled to a PKK camp in Lebanon in 1991 and attended courses given by PKK leader Abdullah Ocalan. Alatas challenged Pacal's testimony, arguing that the witness should have testified in court before the defendants rather than in prison, where attorneys were unable to cross examine him. Alatas further questioned Pacal's motives, claiming that Pacal had received an award from the government for his service as a witness. Alatas noted that Pacal's original testimony, also taken in prison, was cited by the ECHR in its ruling that the defendants' first trial was unfair.

5. (C) After the hearing, Sema Kilicer, political officer at the EU Ankara office, told us EU observers are highly critical of the SSC's conduct of the trial. She said the trial will receive a brief, unfavorable mention in Turkey's EU Progress Report, to be released November 5.

Comment

6. (C) Our contacts continue to believe, as reported reftel, that the court will likely rule to convict the defendants

after 1-3 more hearings. Then defense will appeal, unsuccessfully. In order to blunt the controversy, they predict, the court will sentence the defendants to time served, releasing them slightly before 2005, when their prison terms are set to expire.

EDELMAN